

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53549; File No. SR-NYSE-2006-11]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a Moratorium on the Qualification and Registration of Registered Competitive Market Makers

March 24, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 24, 2006, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under Section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This Exchange is proposing a modification to the recently implemented moratorium on the qualification and registration of new Registered Competitive Market Makers ("RCMMs") covered in NYSE Rule 107A.<sup>5</sup> The text of the proposed rule change is available on the NYSE's Web site (<http://www.nyse.com>), at the NYSE's Office of the Secretary, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at

the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange recently implemented a moratorium on the qualification and registration of new Competitive Traders ("CTs") and RCMMs while the Exchange conducts a study on their future viability.<sup>6</sup> In this filing, the Exchange seeks to modify the moratorium in order to permit the registration of a replacement of a firm's existing RCMM, should such employee cease being an RCMM.

The Exchange noted in the Release that the moratorium on registrations would not impact existing RCMMs and CTs.<sup>7</sup> In furtherance of this goal, the Exchange proposes to allow any firm that loses a registered RCMM during the moratorium because such person ceases being an RCMM, to replace him or her by registering a new RCMM. Any RCMM working with a firm continues to be free to transfer to another firm or to become independent, but the firm he/she is leaving will not have the right of replacing him/her by registering a new RCMM unless the existing RCMM gives up his or her registration. Any RCMM firm will continue to have the choice to hire an existing RCMM as a replacement.

As noted in the Release,<sup>8</sup> the Exchange will promptly file for approval with the Commission any changes to its rules that the Exchange determines are warranted upon completion of its review of the future viability of CTs and RCMMs. The review is currently estimated to be completed on or about June 30, 2006.

###### 2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>9</sup> that an exchange have rules that are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and

open market and a national market system and, in general, to protect investors and the public interest.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement. The Commission has determined to waive this requirement.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Securities Exchange Act Release No. 52648 (October 21, 2005), 70 FR 62155 (October 28, 2005) (SR-NYSE-2005-63) (the "Release").

<sup>6</sup> See *supra* note 5.

<sup>7</sup> *Id.*

<sup>8</sup> See *id.*

<sup>9</sup> 15 U.S.C. 78f(b)(5).

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2006-11 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2006-11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2006-11 and should be submitted on or before April 21, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Nancy M. Morris,**  
*Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-53548; File No. SR-Phlx-2005-42]

**Self-Regulatory Organizations;  
Philadelphia Stock Exchange, Inc.;  
Notice of Filing of Proposed Rule  
Change and Amendment Nos. 1, 2 and  
3 Thereto Relating to Establishment of  
a Neutral "Referee"**

March 24, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 10, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. On June 20, 2005, the Phlx filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On February 16, 2006, the Phlx filed Amendment No. 2 to the proposed rule change.<sup>4</sup> On March 10, 2006, the Phlx filed Amendment No. 3 to the proposed rule change.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

**I. Self-Regulatory Organization's  
Statement of the Terms of Substance of  
the Proposed Rule Change**

The Phlx proposes to amend: (1) Exchange By-Law Article X, Section 10-9, Audit Committee; (2) Exchange Rule 124, Disputes; Exchange Rule 1092, Obvious Errors; (3) Option Floor Procedure Advice ("OFPA") F-27, Floor Official Rulings—Options; OFPA G-2, Trading Rotations, Halts or Reopenings; and (4) Equity Floor Procedure Advice ("EFPA") F-27, Floor Official Rulings—Equity. The proposal would establish a neutral "Referee," an Exchange employee or independent contractor who would have authority to review and rule on appeals from Floor Official rulings concerning the nullification and adjustment of trades, and authorize the Referee to make other initial rulings currently made only by Floor Officials.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> In Amendment No. 1, the Phlx indicated that the Exchange's Board of Governors approved the proposed amendment to Exchange By-Law Article X, Section 10-9 for filing with the Commission on June 15, 2005.

<sup>4</sup> Amendment No. 2 superseded and replaced in their entirety the original filing and Amendment No. 1 thereto.

<sup>5</sup> In Amendment No. 3, the Phlx made minor changes to the purpose section and rule text of the proposed rule change.

The text of the proposed rule change is set forth below. [Brackets] indicate deletions; *italics* indicate new text.

**PHILADELPHIA STOCK EXCHANGE,  
INC. BY-LAWS**

\* \* \* \* \*

**Article X**

**Standing Committees**

Sec. 10-1.-10-8. No change.

**Audit Committee**

Sec. 10-9. (a)-(c) No change.

*(d) The Audit Committee shall recommend for appointment by the Board of Governors a qualified Exchange employee or independent contractor, the Referee, to review Floor Official rulings concerning the nullification and/or adjustment of transactions, and to act in the capacity of a Floor Official respecting initial rulings concerning requests for relief from the requirements of certain Exchange rules, Equity Floor Procedure Advices and Option Floor Procedure Advices. The Audit Committee shall determine that the Referee has sufficient expertise in the area of securities trading to act in the capacity of a Floor Official respecting initial rulings concerning requests for relief and to conduct reviews of Floor Official rulings, and possesses sufficient knowledge of Exchange rules and the relevant sections of the Securities Exchange Act of 1934, as amended, and the rules thereunder.*

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**PHILADELPHIA STOCK EXCHANGE,  
INC. RULES OF THE BOARD OF  
GOVERNORS**

\* \* \* \* \*

**Disputes**

Rule 124. (a) Disputes occurring on and relating to the trading floor, if not settled by agreement between the members interested, shall be settled, if practicable, by vote of the members knowing of the transaction in question; if not so settled, they shall be settled by a Floor Official [summoned to the trading crowd] *designated by Market Surveillance to rule on the dispute.*

In issuing decisions for the resolution of trading disputes, Floor Officials [may] *shall* institute the course of action deemed to be most fair to all parties under the circumstances at the time. A Floor Official may direct the execution of an order on the floor, or adjust the transaction terms or participants to an executed order on the floor. However, two Option Floor Officials may nullify a transaction if they determine the transaction to have been in violation of

<sup>12</sup> 17 CFR 200.30-3(a)(12).